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EXAMINER

TRAN, LOUIS B

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

# Office Action Summary

Application No.

09/926,736

Applicant(s)

STERN, RAN

Examiner

Louis B Tran

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show items 12, 18, and 13 as described in the specification. As is, the numbers are not connected with any leader lines and fail to clearly depict the invention in Figure 2. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 17 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a container with a hole, does not reasonably provide enablement for a container with a hole having the same material thickness as a container without a hole. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to understand the invention commensurate in scope with these claims. Clarification is required.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 17 recites the limitation "the thickness" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim since it is unclear which thickness is being referred to.

7. Claim 16 recites the limitation "the other layer" in line 4 of the claim. There is insufficient antecedent basis for this limitation in the claim since it is unclear which thickness is being referred to.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 5-7, 9-13, 15, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida (4,762,514).

With respect to claim 5, Yoshida anticipates a method of producing a container made out of flexible laminate web material, comprising using a directed energy source

22 to provide a puncture point on a surface of said web material at the intersection of at least two beam paths across said web material seen in Figure 11.

With respect to claim 6, Yoshida anticipates a method wherein said puncture point is formed by the intersection of at least three laser score paths as in Figure 1.

With respect to claim 7, Yoshida anticipates a method wherein said intersection of laser score paths is provided against a highlighted background area on said web material.

With respect to claim 9, Yoshida anticipates adjusting the energy and the speed of the laser beam to achieve the effect of a beam in the range of 2.5 to 3.5 joules as in column 5, line 31.

With respect to claim 10, Yoshida anticipates adjusting the laser beam energy by changing the distance between a surface and said directed energy source as in column 5, lines 32-42.

With respect to claim 11, Yoshida anticipates wherein said highlighted area is a dot as seen in Figure 1.

With respect to claim 12, Yoshida anticipates a container made out of flexible laminate web having a focal weakness comprising intersecting laser score paths, provided for insertion of drinking straw.

With respect to claim 13, Yoshida anticipates a container wherein said intersection of laser score paths is provided in a highlighted area on said web material.

With respect to claim 15, Yoshida anticipates a container comprising a dot on the outer side of the front side of the bag, in order to enable a child to know where is the exact place which should be pierced by the straw.

With respect to claim 18, Yoshida anticipates a container made from at least two panels of flexible laminate web material, at least one of said two panels of flexible laminate web material having a structural layer 20, and a barrier layer 6, said structural layer and said barrier layer having a hole passing there through as in Figure 10 A, and further having an extruded sealant layer 4 applied onto a barrier layer 3 and occluding said hole passing through said barrier layer and said structural layer as seen in Figure 3.

With respect to claim 19, Yoshida anticipates a sealant layer 2 applied onto said extruded sealant layer 4.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wild (5,868,658) in view of Heller Jr. et al. (3,459,625).

Wild discloses the invention substantially as claimed including the method of making a beverage container constructed from at least two panels of flexible laminate web material, at least a first panel thereof having a structural layer, a barrier layer and a sealant layer 1a, 1b, 1c, said sealant layer having a first thickness, comprising the steps of punching a hole through said first panel, joining panels to thereby form a drinking pouch but does not show extruding molten sealant onto said sealant layer, thereby occluding said hole, cooling said first panel, a sealant layer is polyethylene in a first desired thickness (as in claim 1), the steps of conveying the bottom sheeting web in the conveying direction between the front and rear side sheeting webs, and welding the bottom sheeting web in part to the front and rear side sheeting webs as in column 3, lines 55-65 (as in claim 3 and 4).

However, Heller Jr. et al. teaches the use of extruding molten sealant onto a sealant layer, thereby occluding said hole, cooling said first panel (as in claim 1), said extruded molten sealant is extruded molten polyethylene (as in claim 2), for the purpose of covering an aperture as described in column 6, lines 40-58 and to increase production speed as in column 1, lines 36-60.

Therefore, it would have been obvious to one having ordinary skill in the art to provide a step of utilizing extruded molten sealant instead of a dry sealant which is later heat sealed in order to increase production speed.

Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an extruded laminate layer instead of a dry laminate layer since the examiner takes Official Notice of the equivalence of extruded

layers and dry layers (item 2 in Wild) for their use in the packaging art and the selection of any of these known equivalents to provide a layer to cover an aperture would be within the level of ordinary skill in the art.

With respect to claim 2, Wild discloses the claimed invention except for the sealant layer being explicitly polyethylene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

12. Claims 8, 14, 16 and 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida (4,762,514).

Yoshida teaches the use of using and adjusting energy of a beam but does not specifically state that a beam containing 3-4 times the energy used in normal scoring treatment is used.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a working range of 3-4 times energy typically used, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Moreover, Yoshida teaches that such adjustability is obvious in column 5, lines 33-42.



Therefore, with respect to claim 14, Yoshida does not specifically state that the width of the laser score path is 3-4 times wider than normal, thereby providing a larger focal weakness.

Again, optimization of the range of laser score width is within the grasp of one of ordinary skill in the art. *In re Aller*, 105 USPQ 233

With respect to claim 16, Yoshida teaches the inherent method steps of covering holes by extrusion lamination of two layers, an adherence layer 4 and an outer layer 2. The adherence layer 4 is spread uniformly on to the sheet, thereby occluding the entire surface of the front side web including said holes, a layer is placed onto the adherence layer during the production process using the adherence layer as an adhesive in order to stick the web together as described in column 3, lines 5-25.

With respect to claim 17, Yoshida teaches in which the final thickness of the web material is just the same as the thickness of a web without a hole, produced according to known methods.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are Akao et al., Frazier et al., Arkins et al. ('656), Wild ('583), Arkins et al. ('782), Littmann, Caines, and Terajima et al.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

lbt  
January 15, 2003

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal flourish extending to the right.

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700